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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2013-0034]**

### **Notice of Buy America Waiver for a Variable Refrigerant Flow HVAC System**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

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**SUMMARY:** In response to the Rock Island County Metropolitan Mass Transit District's (MetroLINK) request for a Buy America waiver for a Variable Refrigerant Flow (VRF) HVAC system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the VRF HVAC system to be installed in MetroLINK's Rock Island Transfer Station. This waiver is limited to a single procurement for the VRF HVAC system for the Rock Island Transfer Station project, an FTA-funded project.

**DATES:** This waiver is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or [mary.j.lee@dot.gov](mailto:mary.j.lee@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to announce that FTA has granted a non-availability waiver for MetroLINK's procurement of a VRF HVAC system for its Rock Island Transfer Station.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C.

5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product must take place in the United States; and (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On February 18, 2014, FTA published a notice in the *Federal Register* requesting comments on MetroLINK’s request for a non-availability waiver for a VRF HVAC system that will be installed into its passenger transfer facility in Rock Island, Illinois, the Rock Island Transfer Station. 79 FR 9313. FTA selected this project for award of fiscal year 2011 funding made available pursuant to the Bus and Bus Facilities Program (49 U.S.C. 5309(b)) in support of U.S. Department of Transportation’s (DOT) Livability Initiative and the Partnership for Sustainable Communities between the U.S. DOT, the U.S. Department of Housing and Urban Development, and the U.S. Environmental Protection Agency (Bus Livability Program). Among other things, FTA selected each project for the Bus Livability Program based upon whether it would promote a more environmentally sustainable transportation system. 76 FR 37393, 37397 (June 27, 2011); *see also* 76 FR 68813 (Nov. 7, 2011). More specifically, FTA assessed the project’s ability to “maintain, protect or enhance the environment, as evidenced by environmentally friendly policies and practices utilized in the project design, construction, and operation that exceed the requirements of the National Environmental Policy Act including items

such as whether the project uses a [U.S. Green Building Council] Leadership in Energy and Environmental Design (LEED)-certified design . . . .” 76 FR at 37397.

MetroLINK’s Rock Island Transfer Station is expected to be LEED-certified and will incorporate a number of sustainable and energy efficient elements. One such element is a VRF HVAC system that, among other things, is space saving, has inverter technology, efficiency, and a non-ozone depleting refrigerant that domestic manufacturers of HVAC systems do not provide. MetroLINK stated in its request that this VRF HVAC system is critical in obtaining the LEED points necessary to achieve the Silver certification (or better) that it is seeking. Thus, MetroLINK specified the brands “Daikin AC” and “Mitsubishi,” or approved equal, but MetroLINK has been unable to identify a domestic manufacturer of the VRF HVAC system that meets its specifications.

The comment period closed on March 4, 2014, but FTA took into consideration the one comment it received from Mitsubishi Electric US, Inc. on March 7, 2014. This commenter supports a waiver and reiterated the non-availability of this type of HVAC system in the United States and the advantages of such a system.

Based upon MetroLINK’s assertions that it is unable to procure a U.S.-manufactured VRF HVAC system, which is critical in obtaining the LEED points necessary to achieve the Silver certification (or better) that it is seeking, and the comment on the advantages of a VRF HVAC system, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the VRF HVAC system.<sup>1</sup> This waiver is limited to a single

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<sup>1</sup> Note that a similar Buy America non-availability waiver was issued on June 22, 2010 by the U.S. Department of Energy (DOE) for the same VRF HVAC system. 75 FR 35447. According to MetroLINK, the U.S. DOE’s determination of inapplicability (U.S. DOE’s Buy America waiver for non-availability) of the American Reinvestment and Recovery Act of 2009 to the same VRF HVAC system indicates the continued non-availability of this product.

procurement for the VRF HVAC system for the Rock Island Transfer Station project.

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